

service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the branching limitations set forth in 12 U.S.C. 36, provided the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24 (Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to, customers items that relate to branching functions within the meaning of 12 U.S.C. 36(j) without regard to the branching limitations set forth in 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. However, a messenger service is clearly established by a third party if:

(i) A party other than the national bank owns the service and its facilities (or rents them from a party other than the bank) and employs the person engaged in the provision of the service; and

(ii) The messenger service:

(A) Makes its services available to the public, including other depository institutions;

(B) Retains ultimate discretion to determine which customers and geographical areas it will serve;

(C) Maintains ultimate responsibility for scheduling, movement, and routing;

(D) Does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is

providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(E) Assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(F) Acts as the agent for the customer when the items are in transit. The bank does not deem items intended for deposit to be deposited until credited to the customer's account at an established bank office or other permissible nonbranch facility. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions constitute one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to 12 CFR 5.30.

#### **§ 7.1013 Debt cancellation contracts.**

A national bank may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of a borrower. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.